

3. Upon information and belief, Defendant Procter & Gamble Manufacturing Company is an Ohio corporation with its principal place of business at One Procter & Gamble Plaza, Cincinnati, Ohio 45202. Upon information and belief, Procter & Gamble Manufacturing Company's registered agent for service of process is CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114.

JURISDICTION AND VENUE

4. This is a *qui tam* action on behalf of the United States for false patent marking pursuant to 35 U.S.C. § 292(b), which provides, in relevant part, "Any person may sue for the penalty [under § 292(a)], in which event one-half shall go to . . . the United States."

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(c) and 1395(a). Defendants have and continue (and/or have and continue to cause others) to transact business in this District, and, on information and belief, have and continue (and/or have and continue to cause others) to falsely mark, affix, and/or advertise in this District the product(s) subject to this Complaint, which Defendants have and continue (and/or have and continue to cause others) to make, use, offer for sale, sell, and/or distribute in this District.

7. Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to their substantial business in this Forum, including: (i) at least a portion of the false marking, affixing, or advertising alleged herein; and/or (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and/or services provided to individuals in Texas and in this District.

COUNT I
FALSE MARKETING OF U.S. PATENT NO. 4,802,255

8. Defendants have and continue (and/or have and continue to cause others) to make, use, offer for sell, sell, and/or import in the United States certain products, including, by way of example only, Oral B Vitality Precision Clean, Oral B Vitality Dual Clean, Oral B Professional Care 8850 DLX, and Oral B Sonic Complete S-320 (“Oral B Products”).

9. Defendants have and continue (and/or have and continue to cause others) to improperly mark, affix, and/or advertise patent rights that they do not possess, including, without limitation, U.S. Patent No. 4,802,255 (“the ‘255 Patent”), a true and complete copy of which is attached as Exhibit A, on Defendants’ products and/or related product packaging, including, by way of example only, the Oral B Products, true and correct copies of which are attached, by way of example only, as Exhibit B, Exhibit C, Exhibit D, and Exhibit E.

10. The ‘255 Patent, which is titled “Novel Brush Filaments,” was filed in the United States on August 10, 1987 and issued on February 7, 1989.

11. The ‘255 Patent expired, at the very latest, on August 10, 2007.

12. When the ‘255 Patent expired, all future rights in that patent ceased to exist.

13. The ‘255 Patent expired, at the very latest, more than two (2) years and seven (7) months prior to the time of filing of this Original Complaint.

14. Although the ‘255 Patent expired, Defendants nevertheless have and chose to continue (and/or have and continue to cause others) to mark, affix, and/or advertise the ‘255 Patent in combination with products, including, without limitation, the Oral B Products, with the intent to deceive the public and gain a competitive advantage in the market.

15. To the extent the ‘255 Patent included any method claims, they have

expired.

16. Upon information and belief, Defendants are sophisticated companies and have many decades of experience applying for, obtaining, and litigating patents.

17. Upon information and belief, Defendants have an in-house legal department.

18. Upon information and belief, Defendants' in-house legal department monitors Defendants' patent rights, including marking, labeling, and/or advertising related thereto.

19. Upon information and belief, Defendants have and continue (and/or have and continue to cause others) to purposefully mark, affix, and/or advertise patent rights that they do not possess, including, without limitation, the '255 Patent, in combination with products, including, without limitation, the Oral B Products, to deceive the public and gain a competitive advantage in the market.

20. Defendants know, or at least reasonably should know, that the '255 Patent has expired.

21. Defendants know, or at least reasonably should know, that the '255 Patent does not cover the Oral B Products, or any products whatsoever.

22. Upon information and belief, each offense of false marking caused by Defendants has and continues to deceive the public to the financial benefit of Defendants.

23. Upon information and belief, each offense of false marking caused by Defendants has and continues to deter competition to the financial benefit of Defendants.

24. Upon information and belief, public deception, and/or competitive harm caused by each of Defendants' false marking has and continues to harm the United States, including Relator, a representative of the public incurring the cost and time associated with this enforcement.

PRAYER FOR RELIEF

25. WHEREFORE, Relator respectfully requests that this Court enter:

- (a) A judgment in favor of Relator that Defendants have falsely marked items in violation of 35 U.S.C. § 292(a);
- (b) A judgment in favor of Relator that Defendants have falsely marked items in violation of 35 U.S.C. § 292(a)-(b) in the form of a civil fine or \$500 per falsely marked article, or an alternative amount, as set by the Court, one-half of any such award to be paid to the United States;
- (c) An accounting for any falsely marked articles not presented at trial and a monetary award set by the Court for such falsely marked articles;
- (d) An award of pre-judgment and post-judgment interests on any monetary award;
- (e) An injunction prohibiting Defendants, and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from violating 35 U.S.C. § 292(a); and
- (f) Any and all other relief, at law or equity, to which Relator may show itself to be entitled.

DEMAND FOR JURY TRIAL

Relator, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: March 24, 2010.

Respectfully submitted,

PAGEL, DAVIS & HILL, P.C.

/s/ Martyn B. Hill
MARTYN B. HILL
State Bar No. 09647460
Federal Bar No. 13806
1415 Louisiana Street, 22nd Floor
Houston, Texas 77002
Telephone: 713-951-0160
Facsimile: 713-951-0662

**ATTORNEYS FOR RELATOR
O & G SEARCHQUEST, INC.**